

ADDENDUM NO. 1

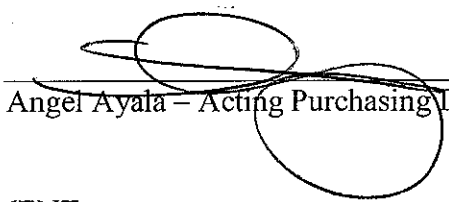
TO: ALL BIDDERS
FROM: CITY OF HIALEAH
ITB NO.: 2015-16-9500-00-016
RE: ITB FOR SOLID WASTE DISPOSAL SERVICES
DATE: MAY 17, 2016

On or about April 29, 2016, the City of Hialeah issued an Invitation To Bid ("ITB") for Solid Waste Disposal Services (ITB No. 2015-16-9500-00-016). The City's ITB needs to be revised, as described in this Addendum No. 1 ("Addendum"). The additions, deletions, clarifications, and changes described in this Addendum are hereby incorporated into the City's ITB.

This Addendum consists of two (2) typed pages, one Addendum Receipt Form ("ARF"), and one attachment, which is labelled Attachment "A" (Hialeah's Responses to Vendors' Questions).

ALL OF THE TERMS AND CONDITIONS IN THE CITY'S ITB SHALL REMAIN UNCHANGED, EXCEPT AS EXPRESSLY STATED IN THIS ADDENDUM.

Approved for issue:


Angel Ayala – Acting Purchasing Director

Date: May 17, 2016

ACKNOWLEDGEMENT:

Receipt of this Addendum shall be acknowledged in the space provided on the Addendum Receipt Form – ARF (copy attached). A signed copy of this form must be faxed immediately to the City of Hialeah Purchasing Division at (305) 883-5871 and a signed copy must be submitted with the vendor's sealed bid.

CHANGES IN THE ITB:

1. The City's Response to Vendors' Questions.

Pursuant to Section 2.6 of the City's ITB, the City received written questions from two (2) vendors: (1) Progressive Waste Solutions of FL, Inc. ("Progressive"); and (2) Waste Management Inc. of Florida ("WMIF"). All of the questions submitted by these vendors are

quoted in Attachment "A" (Hialeah's Responses to Vendors' Questions), which is attached to this Addendum. The City's responses are set forth immediately after each question.

2. Schedule for Revising the Agreement.

As indicated in the City's responses to the vendors' questions, the City intends to revise certain provisions in the draft "Agreement for the Disposal of Class I Waste" ("Agreement"). All of the revisions will be incorporated into the next draft of the Agreement. However, the City does not intend to issue another draft of the Agreement until the City has selected the Successful Bidder. The City will issue a revised version of the Agreement before the Agreement is executed by the City and the Successful Bidder.

3. Deadline for Bids.

The deadline for submitting bids in response to the City's ITB is **2:00 P.M. on May 31, 2016.**

END OF ADDENDUM No. 1

Attachment "A" to Addendum No. 1

City of Hialeah ITB No. 2015-16-9500-00-016

HIALEAH'S RESPONSES TO VENDORS' QUESTIONS

The City of Hialeah received timely written questions from Progressive and WMIF concerning the City's ITB for solid waste disposal services. Each of these questions is quoted below. The City's response to each question is set forth below the question.

Questions From Progressive

ITB

1. Section 2.1:

As is mandated by this section, did any of the participants in the pre-bid meeting submit a timely request to have the City's Class I Waste taken to a waste-to-energy facility? If so, please provide a time stamped copy of said request.

No; none of the participants in the pre-bid meeting submitted a timely request to have the City's Class I Waste taken to a waste-to-energy facility.

2. Section 2.2:

As has been publically disclosed, Progressive is merging with Waste Connections, Inc. Both companies are traded on the NYSE and each have approximately \$2 billion dollars in annual sales. The combined companies will have approximately \$4 billion dollars in annual sales. The companies have received their Justice Department Early Anti-Trust Clearance and expect the transaction to close in the second quarter of 2016. Given the timing of this ITB, there is a substantial likelihood that the Progressive proposal will be submitted prior to the closing of (could be just after) the transaction, but the award will most likely happen after the closing, if the current transaction and ITB timing do not change. How would the City like Progressive to document this in its proposal so that there is maximum transparency and there is not the possibility of disqualification or assignment difficulties (if assignment is deemed necessary) should Progressive be the proposer recommended for award? (Please see www.sec.gov, for news under ticker symbols BIN & WCN)

In its bid, Progressive should provide: (a) all of the information that is requested in the ITB, based on the facts concerning Progressive; (b) a brief description of Waste Connections, Inc. ("Waste Connections"); (c) confirmation that the corporate entity remaining after the merger

(presumably Waste Connections) will accept and comply with Progressive's commitments and obligations under Progressive's bid. If Progressive provides this information and Waste Connections complies with the requirements in the ITB (e.g., provides insurance and a performance bond), the City will not disqualify Progressive or Waste Connections as a result of the merger. The City will not object to the assignment of the Agreement to Waste Connections, if Waste Connections complies with the requirements in the ITB.

DISPOSAL AGREEMENT

3. Article 1(27) (f) & (h):

Since Progressive is the only potential proposer with its facility within the municipal boundaries of Hialeah, the exemption of a "Force Majeure" that is as a result of actions taken by the City of Hialeah, puts Progressive, and only Progressive, at a significant competitive disadvantage. Please remove the City as an exemption in the "Force Majeure" definition.

The City agrees to revise the Agreement in the manner requested. Specifically, in Article 1, Section 27(f) and Section 27(h), the City will delete the words "other than the City" from the definition.

4. Article 3.2:

As Progressive's hauling franchise with the City permits the collection of curbside waste until 7:00 pm, the disposal facility needs to remain open to receive the waste collected up until then. Please consider revising the required hours of operation to 6:00 am – 8:00 pm to facilitate the disposal of the City's waste.

The City will revise the Agreement to require the Contractor's scale house and Transfer Station to be open for business between the hours of 6:00 A.M. and 6:00 P.M. This change will ensure that the operating hours at the Transfer Station are the same as the operating hours at the facility currently designated by the City for the disposal of the City's waste.

5. Article 3.3:

In order to provide maximum efficiency and to aid in faster turnaround times, Progressive requests that Tare Weights be utilized in lieu of weighing each truck on the way out. Please revise this section to allow for the proposed change.

The City will revise Section 3.3 of the Agreement to allow for the use of tare weights.

6. Article 3.6(1):

In order to create an auditable and verifiable trail of communication as well as respecting that the Director may not be available to receive oral communications, please revise this section to permit the required notification to be by email.

The City will revise Section 3.6(b)(1) of the Agreement to require the Contractor to provide notice to the Director via e-mail, instead of providing oral notice.

7. Article 4.3:

Since all proposers submit detailed and vetted facility "Operating Manuals" with their permit application to the licensing authorities AND these are already public records, please revise to allow the Contractor to meet the requirements of this article by providing copies of those that are already in the public domain and were part of the licensing process.

The City will revise Section 4.3 of the Agreement to allow the Contractor to submit an FDEP/DERM approved Operating Manual to satisfy some or all of the requirements in Section 4.3. However, if the FDEP/DERM approved Operating Manual does not contain all of the information required in Section 4.3, the Contractor shall be obligated to provide the additional information needed to satisfy the requirements in Section 4.3.

8. Article 5.4:

Due to the possible exposure to confidential and proprietary information and the likelihood that it would cause a substantial disruption in the operation of the business, please limit the observer's access to only the scale-house and only to the times when City Vehicles are arriving at the facility and only a maximum of once per quarter. As for the disposal facility, there is no legitimate business reason to have this option available to the City. Once the waste gets aggregated with other waste it becomes part of a whole. If the City wants a tour of the disposal site once per year that would be much more appropriate. Please amend to address these concerns.

The City will revise Section 5.4 of the Agreement to require the City to give reasonable advance notice to the Contractor before the City exercises its right to observe the operations at the Transfer Station and the Disposal Facility. The City will coordinate with the Contractor to

ensure that any potential disruptions to the Contractor's operations are minimized or eliminated. However, the City has a legitimate business interest in observing the Contractor's operations to ensure that the terms of the Agreement are satisfied and the Contractor's operations are conducted in compliance with Applicable Laws, including but not limited to environmental laws. For this reason, the City will not make the other changes requested by Progressive.

9. **Article 5.5:**

(1) Please amend to include in the list of excludable information, "...the Contractor's internal [or external] costs, profits, and pricing data." (2) The exercise of rights under this section should be at the City's expense and it is unreasonable to permit the City to inspect as often as it deems necessary. Please amend to require the City to pay their own expenses and include a maximum frequency of two times per year.

**The City will amend Section 5.5 of the Agreement to state as follows:
"Notwithstanding the foregoing, the City's rights under this Section 5.5 do not extend to or include the Contractor's proprietary records concerning personnel matters or the Contractor's internal costs, profits, and pricing data."**

**The City also will add the following sentence to the end of Section 5.5:
"The City shall pay the cost of inspecting and auditing the Contractor's documents."**

The City will not make the other changes requested by Progressive.

Questions From WMIF

10. Between the initial term, the city's 5-year renewal options, and additionally, the city's twelve (30) day renewal options, this contract could potentially exceed 13 years in duration. No one can accurately predict future costs that far out, and that uncertainty translates to risk, which in turn increases required returns. Consumer items measured in the CPI (such as cereal, milk, cigarettes, and haircuts) have little direct correlation to the cost of maintaining industrial transfer and disposal facilities. The U.S. Dept. of Labor, Bureau of Labor Statistics offers a much more accurate measurement of the latter: In the interest of obtaining more favorable initial rates, please replace the proposed CPI with the Water, Sewer, and Trash index, and eliminate the annual cap.

No; the City will not use the Consumer Price Index for Water, Sewer, and Trash Collection Services.

11. Please confirm that the pending transaction between Waste Connections and Progressive (as the city's collection contractor) does not represent an event that will enable the city to terminate the disposal contract for convenience, as referenced in section 9.5 of the contract.

The City will not exercise its right to terminate the Agreement for convenience, pursuant to Section 9.5 of the Agreement, if Progressive merges with Waste Connections, Inc.

12. In order to clarify understanding and minimize the chance of misunderstandings and potential subsequent protests, it is crucial that all proposers fully understand exactly how the city will measure and compare the various proposers' rates and calculate the nets costs to the city. Please confirm exactly how the city will tabulate total costs for purposes of comparing various proposers' net costs to the city. This would include, but not be limited to the following factors:

- Total annual tons
- Total number of residences
- Total number of years
- Annual rate and cost adjustments, individually, for collection and disposal

For the purposes of calculating the net cost of a Bidder's services, the City will assume that: (a) the City will deliver seventy thousand (70,000) Tons of Class I Waste to the Transfer Station each year; (b) there are thirty-seven thousand one hundred thirteen (37,113) dwelling units receiving service by Progressive pursuant to the City's exclusive franchise agreement; (c) the Successful Bidder/Contractor will provide service under the Agreement for eight (8) years; and (d) the rates paid by the City under its exclusive franchise agreement for collection service, and the rates paid by the City under its Agreement for disposal services, will increase each year by two percent (2%).

13. Please confirm that all of the city's residential solid waste and residential rubbish will be delivered to the successful proposer under the terms of the disposal contract. In other words, the successful proposer will receive all residential solid waste and all residential rubbish, but may or may not receive all or any of the residential bulky waste and residential yard waste, as was stated in the pre-bid conference.

The City will revise Section 5.1 of the Agreement as follows: "To the extent allowed by law, the City will require its franchisee (currently Progressive Waste Solutions of FL, Inc.) to deliver the Garbage and Rubbish it collects from residential customers to the Transfer Station

until the franchise agreement or this Agreement terminates or expires, whichever occurs first. However, the City reserves its right to divert any or all of the City's other Solid Waste (e.g., Bulk Waste, Yard Trash, and Recyclable Material) to any other facility or location of the City's choice." As stated during the pre-bid conference, the City anticipates that the Successful Bidder/Contractor will receive all of the City's residential Garbage and Rubbish. The Successful Bidder may or may not receive the City's residential Bulk Waste, Yard Trash, or Recyclable Material.

14. Please make the renewals bi-lateral options, with mutual consent.

Article 8 of the Agreement provides for renewals, at the City's sole option, for up to a total of five (5) years. The City is issuing this ITB because the City wants to ensure that it has a long term contract for the disposal of the City's Class I Waste. For this reason, the City will not agree to make the renewals subject to the Contractor's approval.

15. Please confirm payment terms in section 6.2 of the contract that the city will make payment for properly invoiced services in the month immediately following services rendered.

The City will revise Section 6.2 of the Agreement to state that the City will pay undisputed amounts to the Contractor within thirty (30) calendar days after the City receives the Contractor's invoice for payment and supporting information.

ADDENDUM RECEIPT FORM

CITY OF HIALEAH

SOLID WASTE COLLECTION SERVICES

ITB #2015-16-9500-00-016

ADDENDUM No. 1

CONTRACTOR'S NAME _____

ADDRESS _____

PHONE NO. _____

CONTACT NAME _____ **SIGNATURE** _____

A signed copy of this form must be faxed immediately to the City of Hialeah, Purchasing Division, at (305) 883-5871. A signed copy of this form also must be submitted with the vendor's sealed bid.

**THE VENDOR ACKNOWLEDGES RECEIPT OF THE FOLLOWING ADDENDUM BY
SIGNING AND DATING BELOW:**

<u>ADDENDUM</u>	<u>SIGNATURE</u>	<u>DATE</u>
<u>1</u>	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____